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BANKS AND BANKING—CHECKS—APPROPRIATION OF DEPOSIT—GARNISHMENT.—The plaintiff brought this action to recover from the defendant bank certain deposits to the credit of his judgment debtor, which had been attached while in the hands of the bank. The judgment debtor had, before the levy, drawn a check in favor of the Merchants National Bank of Cincinnati and deposited it in that bank, receiving credit therefor. When this check was presented, the defendant bank paid the amount, although the deposit had already been levied upon under the attachment. *Held,* a check is an assignment *pro tanto* of the deposit and is a prior lien over an attachment levied after the drawing of the check, but before its presentment. However, the Merchants National Bank was not a holder for value because it had given only a conditional credit for the check, and not being a holder for value did not come within the rule. *Boswell et al.* v. *Citizens' Savings Bank* (1906), — Ky. —, 96 S. W. Rep. 797.

The question of priority between the check-holder and an attaching creditor is one not decided with uniformity. The controlling question is whether or not a check is considered an assignment of funds. In those states in which the doctrine that a check is an assignment prevails the check-holder has priority over the attaching creditor. *Deatheridge* v. *Crumbaugh,* 8 Ky. Law Rep. 592; *Rosenbaum & Co.* v. *Lytle & Co.,* 8 Ky. Law Rep. 607; *Winchester Bank* v. *Clark County National Bank,* 51 S. W. (Ky.) 315; *Nat. Bank of America* v. *Indiana Banking Co.,* 114 Ill. 483, 2 N. E. 401; *Roberts* v. *Austin Corbin & Co.,* 26 Iowa, 315; *Miller* v. *Hubbard,* 4 Cranch C. C. 451, Fed. Cas. No. 9, 574; *Pease* v. *Landauer,* 63 Wis. 20, 53 Am. Rep. 247. On the other hand, in those states in which a check is held not to be an assignment of funds, the intervening attaching creditor is given priority over the check-holder. See *Harrison, Rec.* v. *Wright et al.,* 100 Ind. 515, 50 Am. Rep. 805, in which the authorities are compiled; also *Bullard* v. *Randall,* 1 Gray (Mass.) 605, 61 Am. Dec. 433; *Loyd* v. *McCaffrey,* 46 Pa. St. 410; *Duncan* v. *Berlin,* 60 N. Y. 151; *Bank of Tacoma* v. *Chilberg,* 14 Wash. 247; *Imboden* v. *Perrie,* 81 Tenn. 504; *Love* v. *Ardmore Stock Exchange et al.,* 82 S. W. (Ind. Terr.) 721; *Florence Min. Co.* v. *Brown,* 124 U. S. 385. This case should be distinguished from one in which the check has been given for the exact amount of the deposit. In such a case many courts hold that a check is an assignment. See *Moore* v. *Davis,* 57 Mich. 251, and cases cited. It should also be noticed that the law in Kentucky has been changed by statute since this case arose: § 189 of "An Act relating to negotiable instruments," Acts 1904, p. 250, provides that a check is not an assignment of a bank deposit.

CHATTEL MORTGAGES—RETENTION OF POSSESSION AND POWER OF SALE BY MORTGAGOR—FRAUD.—Action of replevin by the mortgagee of goods against the sheriff, who had levied upon the goods in the hands of the mortgagor on an execution against him. The sheriff defended on the ground that the mortgage was fraudulent in law because the mortgagor was allowed to retain possession and sell the goods mortgaged in the ordinary course of trade. *Held,* that the mortgage was not void or fraudulent against creditors as a matter

of law. *First National Bank of Roswell* v. *Stewart* (1906), — N. M. —, 86 Pac. Rep. 622.

The case indicates a change in the attitude of the courts of New Mexico in regard to the validity of this class of chattel mortgages, and overrules the earlier decisions of *Spiegelberg* v. *Hersch*, 3 N. M. 281. The question involved in the principal case is one concerning which the authorities are in hopeless and irreconcilable conflict. In many jurisdictions a mortgage which provides for the retention in possession and sale by the mortgagor without requiring the mortgagor to account for all proceeds to the mortgagee is void as to creditors: *Robinson* v. *Elliott*, 22 Wall. 513; *Cross* v. *Berry*, 132 *Ala.* 92; *Lund* v. *Fletcher*, 39 Ark. 325; *Hall* v. *Johnson*, 21 Colo. 414; *Rogers* v. *Munnerlyn*, 36 Fla. 591; *Lewiston Nat. Bk.* v. *Martin*, 2 Idaho, 700; *Huschler* v. *Morris*, 131 Ill. 587; *Humphrey* v. *Mayfield*, 63 Kas. 208; *Woolen Co.* v. *Gallagher*, 58 Minn. 502; *Bullene* v. *Barrett*, 87 Mo. 185; *Rocheleau* v. *Boyle*, 11 Mont. 451; *Mfg. Co.* v. *Snyder*, 54 Neb. 538; *Lutz* v. *Kinney*, 24 Nev. 38; *Potts* v. *Hart*, 99 N. Y. 168; *Freeman* v. *Rawson*, 5 Oh. St. 1; *Little Co.* v. *Burnham*, 5 Okla. 283; *Rome Bank* v. *Haseltine*, 15 Lea (Tenn.) 216; *Wilber* v. *Kray*, 73 Tex. 533; *Hughes* v. *Epling*, 93 Va. 424; *Garden* v. *Bodwing*, 9 W. Va. 121; *Rosenthal* v. *Vernon*, 79 Wis. 245. On the other hand in a considerable number of states the fraudulent nature of such mortgages is a question of fact: *Brett* v. *Carter*, 2 Low. 458; *Etheridge* v. *Sperry*, 139 U. S. 266; *Meyer* v. *Evans*, 66 Ia. 179; *Lister* v. *Simpson*, 38 N. J. Eq. 438; *Kreth* v. *Rogers*, 101 N. C. 263; *Williams* v. *Winsor*, 12 R. I. 9; *Marshall* v. *Crawford*, 45 S. C. 189; *Mercantile Co.* v. *Gardiner*, 5 S. D. 246; *Peabody* v. *Landon*, 61 Vt. 318; *Dillon* v. *Dillon*, 13 Wash. 594; *Conaway* v. *Stealey*, 44 W. Va. 163; *Frankhouser* v. *Ellett*, 22 Kas. 127. But if the mortgagor has to account to the mortgagee for the proceeds, many cases hold that the mortgage is not fraudulent as matter of law. *Fletcher* v. *Martin*, 126 Ind. 55; *Edelhoff* v. *Horner-Miller Mfg. Co.*, 86 Md. 595; *Heilbronner* v. *Lloyd*, 17 Mont. 299; *Davis* v. *Scott*, 22 Neb. 154; *Spaulding* v. *Keyes*, 125 N. Y. 113; *Nat. Bank* v. *Barnes*, 8 N. D. 432; *Kleine* v. *Katzenberger*, 20 Oh. St. 110; *Thornton* v. *Cook*, 97 Ala. 630; *Adler* v. *Phillips*, 63 Ark. 40; *Wells* v. *Alturas, etc., Co.*, 6 Idaho, 506; *Bergman* v. *Jones*, 10 N. D. 520. When proceeds of sales are used not for mortgagor's benefit but solely to replenish the stock, the mortgage is not fraudulent in law: *Woolen Mills* v. *Lewis*, 99 Ky. 398; *Melody* v. *Chandler*, 12 Me. 282; *Sleeper* v. *Chapman*, 121 Mass. 404; *Ephraim* v. *Kellcher* (Wash.) 18 L. R. A. 604. By statute in at least one state such mortgages are valid: *McCord* v. *Albany, etc., Bank*, 7 Wyo. 9. "The cases cannot be reconciled by any process of reasoning or on any principles of law." The tendency of the late decisions seems to be in line with the principal case and in the direction of the holding that the mere retention of possession by the mortgagor with power of sale does not render the mortgage fraudulent *per se*, particularly in view of the modern recording acts. JONES, CHATTEL MORTGAGES, 4th Ed., p. 483, § 425. If a chattel mortgage has been properly recorded it is constructive notice to the world, and no subsequent dealer with the mortgagor need be deceived or injured by his retention of possession; while by means of this provision the mortgagor can continue

in business and gradually pay off the debt for which the goods are security, and by replenishing the stock from time to time prevent impairment of the security. There is much apparent justice and good business policy in the holding of the principal case, and it seems to be in harmony with the spirit of the recording acts.

CIVIL RIGHTS—POWER OF CONGRESS TO PROTECT AGAINST INDIVIDUAL INTERFERENCE.—United States Revised Statutes, § 1977 (U. S. Comp. Stat. 1901, p. 1259) provides that all persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts as is enjoyed by white citizens. § 5508 (U. S. Comp. Stat. 1901, p. 3712) provides that if two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise of any right secured to him by the constitution or laws of the United States, they shall be subject to fine and imprisonment and be ineligible to any office created by the Constitution or laws of the United States. Fourteen private individuals charged with conspiring to compel negro citizens, by intimidation and force, to desist from performing their contracts of employment, and with so compelling them to desist were indicted under the above sections. A demurrer to the indictment on the ground that the offense was not within the jurisdiction of the Federal courts, but was judicially cognizable by state tribunals only, was overruled, and on the trial three of the defendants were found guilty. On writ of error to the Supreme Court of the United States it was *held,* (Mr. JUSTICE HARLAN and Mr. JUSTICE DAY dissenting) that Congress was not empowered by the United States Constitution, 13th Amendment, to make the action complained of an offense against the United States, cognizable in the Federal courts, but that the remedy must be sought through state action and in state tribunals, subject to the supervision of the Supreme Court of the United States by writ of error in proper cases. *Hodges et al.* v. *United States* (1906), — U. S. —, 27 Sup. Ct. Rep. 6.

Mr. JUSTICE BREWER, speaking for the court, says that since prior to the three post bellum amendments the national government had no jurisdiction over a wrong like that charged, and since the Fourteenth and Fifteenth Amendments are restrictions upon state action alone, the jurisdiction claimed, if it exists, must have been vested in the nation by the Thirteenth Amendment. The Thirteenth Amendment is then declared to be a denunciation of a condition and not a declaration in favor of any particular people. "Slavery or involuntary servitude of the Chinese, of the Italian, of the Anglo-Saxon, are as much within its compass as slavery and involuntary servitude of the African." The argument that the wrong complained of was one of the disabilities of slavery, one of the indicia of its existence, and that such disabilities are within the prohibition of the Thirteenth Amendment was answered by the majority opinion as follows: "It was not the intent of the Amendment to denounce every act done by an individual which was wrong if done to a free man and yet justified in a condition of slavery, and to give authority to Congress to enforce such denunciation." Mr. JUSTICE HARLAN'S strong dissenting opinion is to the effect that since the Thirteenth Amendment is